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10/712,490

11/13/2003

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EXAMINER

HOEKSTRA, JEFFREY GERBEN

ART UNIT

PAPER NUMBER

3736

NOTIFICATION DATE

DELIVERY MODE

10/21/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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***Advisory Action
After the Filing of an Appeal Brief***

Application No.

10/712,490

Applicant(s)

DUSSAUD ET AL.

Examiner

JEFFREY G. HOEKSTRA

Art Unit

3736

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The reply filed 07 October 2009 is acknowledged.

1. ☐ The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:

a. ☐ The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).

b. ☐ The affidavit or other evidence is not timely filed before the filing of an appeal brief.
See 37 CFR 41.33(d)(2).

2. ☐ The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. ☒ The reply is entered. An explanation of the status of the claims after entry is below or attached.

4. ☒ Other: See Continuation Sheet

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736

/Jeffrey G Hoekstra/
Examiner, Art Unit 3736

Continuation of 4 Other:

The status of the claims is as follows: claims 1-11 and 17-20 remain rejected as set forth in the Final Office Action mailed 07/08/2009, as reiterated hereinbelow.

Claim rejections - 35 USC § 101

Claims 1-11 and 17-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

3. Independent claims 1 and 5 positively recite in part "means for generating an acoustic emission signal from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces..., wherein the acoustic emission signal is emitted when skin on one area of the body slides or rubs skin on another area of the body without motorized support".

4. The claimed invention requires a proper interpretation of the claims under 35 U.S.C. 112 6th paragraph. The means-plus-function limitation above interpreted consistent with the instant specification (see page 10 paragraphs 1 and 2) comprises at least the following:

a. "The inventive method uses acoustic signals emitted generated from contact with a substrate, preferably skin, when the skin on one area of the human body slides on the skin on another area of the body, i.e., skin on skin. The frictional forces in the skin/skin contact generate vibration patterns that are sensed by probe(s) 12 placed near the skin/skin contact area and recorded by result storage, manipulation, and output system 18... Acoustic emission is recorded during the gentle rub of the hand or finger on another skin part. It is typically detected on the forearm, the hand or the face, but could also be used for other body parts." 6. The scope of the claimed invention positively recites naturally occurring phenomenon as structural limitations comprising portions of a human body (i.e. at least "skin on one area of the body", "skin on another area of the body", and "skin/skin frictional forces"). Claiming portions of the human body, including for example the skin of a hand, a finger, or a forearm, as structural limitations comprises non-statutory subject matter.

Claim Rejections - 35 USC § 102

8. Claims 1, 3-6, 8-11, and 17-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Non-Patent Literature submission: Abstracts of a presentation at a skin conference in Hamburg, 2003, specifically Flament et al. ("Finger perception metrology. Correlation between friction force and acoustic emission"), hereinafter Flament.

9. For claims 1, 3-6, 8-11, and 17-20, Flament discloses a tactile acoustic emission measurement and analysis apparatus (Flament, pages 168-169), comprising inter alia:

o means of generating an acoustic emission signal from a body (Flament, pages 168-169)

o means for collecting, storing, and displaying said emission signal (Flament, pages 168-169); and

o means for correlating said emission signal with an attribute of skin of frictional forces comprising a means for evaluating current appearance of skin attributes (Flament, pages 168-169),

o wherein said apparatus is used as a clinical evaluation tool of skin attributes (Flament, pages 168-169),

o wherein said apparatus is intended to be used by consumers or clinicians (e.g. a beautician or professional advisor, Flament, pages 168-169) to study/evaluate the impact the effect of the application cosmetic compositions that affect skin attributes, including: hydration, texture, roughness, porosity, wrinkles, and pathologies of cutaneous tissue (psoriasis, eczema, dry skin, etc...) (Flament, pages 168-169),

o wherein said system comprises a medium for indicia of at least said two said skin attributes (i.e. test results) that allows said clinician to distinguish the effect of said application of cosmetic composition (Flament et al, pages 168-169),

o wherein the system is capable of being placed alongside a container holding said cosmetic composition and facilitating cosmetic composition selection based on the determined skin attributes,

o wherein said system is used in air (Flament et al, pages 168-169).

Claim Rejections - 35 USC § 103

11. Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flament in view of Fleming (Non-Patent Literature submission: Abstracts of a presentation at a skin conference in Hamburg, 2003, Fleming "Mobile, multimedia computing for improved clinicopathologic correlation in dermatopathology").

12. Flament discloses the claimed invention, as set forth and cited above, except for expressly disclosing a means for digitally displaying test result signals via the internet and/or handheld software. Fleming teaches a means for digitally displaying test result signals via the internet and/or handheld software (Fleming, pages 170-171). All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. All of the component parts are known in Flament and Fleming. The only difference is the combination of the component parts into a single device. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the components as taught by Flament with the components as taught by Fleming to achieve the predictable results of providing an alternate means to display diagnostic data..